

### REMARKS

Claims 32-35, 42-64 and 68 are pending in the present application. Claims 1-31, 36-41 and 65-67 have been canceled. Claims 32, 34, 48 and 52 have been amended. Claim 68 has been added. Claims 51, 55 and 61-63 have been withdrawn as being drawn to a non-elected invention and/or species. The Examiner has indicated that claims 34 and 35 would be allowable if rewritten to include all of the limitations of the claim(s) from which they depend. Applicant has rewritten these claims as indicated. The Examiner has also indicated that claims 42-47 would be patentable subject only to filing a Terminal Disclaimer. Applicant is submitting herewith a Terminal Disclaimer (see below.)

Applicant respectfully requests consideration of the application in view of the foregoing amendments and remarks appearing below.

#### **Rejection Based on Nonstatutory Double Patenting**

The Examiner has rejected claims 32-35, 42-55 and 64 under the judicially created doctrine of obviousness-type double patenting in view of claims 1-31, 41 and/or 42 of U.S. Patent No. 6,684,534, which issued from the parent application of the present application. In response to this rejection, accompanying this Amendment and Response is a Terminal Disclaimer disclaiming the term of a patent maturing from the present application that might extend beyond the term of U.S. Patent No. 6,684,534.

Based on the submission of the Terminal Disclaimer, Applicant respectfully requests that the Examiner withdraw the present rejection of claims 32-35, 42-55 and 64.

#### **Rejections Under 35 U.S.C. § 102**

##### ***Bejean et al.***

The Examiner has rejected claims 52, 54 and 56-60 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,954,358 to Bejean et al., stating Bejean et al. disclose all the elements of these claims. (Independent claims are underlined for convenience.) Applicant respectfully disagrees.

A detailed description of the Bejean et al. device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

Regarding independent claim 52, as amended this claim requires, among other things, a first means that is self-clamping into engagement with an engagement member with application of a force by the engagement member to the first means. The Bejean et al. device does not include such a self-clamping means.

In the Office Action, the Examiner cites a definition for the term "clamping" from Webster's New World Dictionary as "gripping, fastening, or bracing." Present Office Action, page 7, section 5. Unfortunately, Applicant was unable to obtain access to this dictionary to review the definition. However, Applicant suspects that there may be a part missing from this definition, namely a qualifier such as "with a clamp or as if with a clamp." This is so because every definition of the transitive verb form of the term "clamp" Applicant is aware of qualifies the character of the clamping action in this manner. See Exhibit A attached hereto that includes definitions from the Merriam-Webster Online Dictionary, the American Heritage Dictionary of the English Language, fourth edition and the Compact Oxford English Dictionary. See also Webster's Ninth New Collegiate Dictionary. For example, the America Heritage Dictionary definition of the term "clamp" is "[t]o fasten, grip, or support with or as if with a clamp." [Emphasis added.] It is noted that the term "clamping" at issue is merely the present participle of the transitive verb "clamp," and therefore has the meaning, "fastening, gripping, or supporting with or as with a clamp." Applicant asserts that the qualifier is important to plain and ordinary meaning of the term "self-clamping" appearing in the present claims. In addition, Applicant notes that claims are to be given the broadest interpretation consistent with the interpretation that would be reached by those skilled in the art. MPEP § 2111. Indeed, Applicant asserts that those skilled in the art would understand any definition of "self-clamping" to include this qualifier.

The term "clamp," as a noun, is a device used to join, grip, support or compress mechanical or structural parts. See, e.g., the American Heritage Dictionary definition in Exhibit A. Clamps work by imparting a compressive force to the item or items being clamped. Consequently, by incorporation, any verb form of the term "clamp" requires the action of compressing or the imparting of a compressive force. Thus, the apparently incomplete definition of "clamping" cited by the Examiner is broader than the ordinary meaning, which requires this compression or compressive force concept. Thus, the proper scope of the definition cited by the Examiner should be "gripping (which, by definition, requires application of a compressive

force), fastening using compression or by applying a compressive pressure force, or bracing using compression or by applying a compressive force.”

Applicant asserts that when the proper meaning of the term “self-clamping” is applied to amended claim 52 and, further, when this term is read in the context of the entire limitation of claim 52, it is clear that Bejean et al. do not disclose the self-clamping limitation of amended claim 52. The entire self-clamping limitation, in relevant part, requires a first means that is self-clamping into engagement with an engagement member with application of a force by the engagement member to the first means.

Applicant notes that claim 52 has been amended to change the term “upon” to “with” because Applicant recently learned that an obsolete definition of “upon” is “thereafter.” Consequently, to avoid any misinterpretation of the claim, which requires that the force applied by the engagement member to the first means be contemporaneous with and cause the clamping, Applicant uses the term “with.” In the present context, the term “with” is “used as a function word to indicate a participant in an action, transaction, or arrangement.” Merriam Webster’s Ninth New Collegiate Dictionary.

Based on the meaning of “clamping” as defined above, amended claim 52 requires that the force applied to the first means by the engagement member cause the first means to apply a compressive force to the engagement member. Thus, by definition, the first means is receiving a first force from the engagement member that actively causes the first means to apply a second force to the engagement member. The Bejean et al. binding does not include such a first means. In other words, the Bejean et al. binding does not include any component that applies a force to the engagement member (11) that is caused by another force applied to that component by the engagement member.

For example, when engagement member 11 is first inserted into the Bejean et al. binding mechanism 15, the engagement member applies a downward force to latch 152 so as to rotate the latch out of the way so that the engagement member may properly seat within U-shaped housing 156. This force does not cause the latch, or any other component, to actively apply a clamping force back to the engagement member as claim 52 requires. Once engagement member 11 is seated in U-shaped housing, if the engagement member applies an upward force to latch 152, this force is resisted, in part, by the latch’s inability to rotate counterclockwise (FIGS. 3 and 4). Importantly, the application of this upward force does not induce any self-clamping action of

latch 152 or any other component. The latch and wings 150a, 150b merely passively resist the upward force. This passive resistance cannot reasonably be considered to be an active self-clamping action. Consequently, Bejean et al. fail to disclose the self-clamping limitation of amended independent claim 52 and, therefore, cannot anticipate claim 52, nor claim 54 that depends therefrom.

Regarding the Examiner's characterization that the Bejean et al. device is "self-clamping" because it grips and fastens the engagement member to the device, upon application of the proper meaning of "self-clamping" that requires an active application of a compressive force, it should now be clear that the Bejean et al. device is, in fact, not self-clamping, because no such compressive force is actively applied to the engagement member. A more appropriate term for the action of the Bejean et al. binding may be "self-closing" or "self-fastening," but not "self-clamping."

Regarding independent claim 56, this claim requires, among other things, second and third means for, respectively, ejecting coherent material from a cavity of a receiver of an engagement member and for allowing the coherent material to move away from the receiver. The Examiner asserts that the Bejean et al. shoe insert (1a) and sole (20) of the boot (2) cooperate to form a cavity extending from anchoring device 11 to cross members 122, 123. Applicant disagrees that any cavity formed between the shoe insert and the boot has such an extent. If the Bejean et al. shoe insert and boot have a cavity at all, it is defined only by the bottom surface of sole 20 and the space between cross members 122, 123, the thickness of which gives the cavity its depth. The space between anchoring device 11 and the corresponding lateral side of sole 20 cannot reasonably be considered a cavity. Rather, it is an aperture. A cavity is a "hollow space within a solid object." Oxford Compact Dictionary at [www.askoxford.com](http://www.askoxford.com). Applicant asserts that an aperture is not a cavity because a cavity requires concaveness, which an aperture does not have.

Applicant notes that the Bejean et al. binding includes a means for ejecting a coherent material from the aperture formed between anchoring device 11 and sole 20 of boot 2, this means being spacer 151 and the portions of parallel wings 150a, 150b between which the spacer extends. Again, the aperture is not a cavity. Consequently, the claim limitation is not met, and the Bejean et al. binding cannot anticipate claim 56, nor claims 57-60 that depend therefrom.

Regarding dependent claim 60, this claim requires that both the first means include a latch pivotably attached to a base (by dependency from claim 59) and further that the third means include an opening extending through the latch. In the Office Action, the Examiner asserts that the Bejean et al. binding includes an opening formed below the pivot axis (153) and above the base (13) and laterally to the anchoring device (151). In order to meet the limitation of claim 60 that the opening be in the latch, the Examiner is necessarily considering the latch to include the entire latching mechanism (15) of the Bejean et al. binding. However, this ignores the limitation that the latch be pivotably attached to the base. In the Bejean et al. binding, the entire latch mechanism is not pivotably attached to the base, but rather is fixedly attached to the base. Only latch 152 of the Bejean et al. binding is pivotably attached to the base. However, latch 152, which is properly the latch at issue, does not include any opening. Therefore, the Bejean et al. binding cannot anticipate claim 60.

For at least the foregoing reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

***Bayer et al.***

The Examiner has rejected claims 52 and 53 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,957,479 to Bayer et al., stating Bayer et al. disclose all the elements of these claims. Applicant respectfully disagrees.

A detailed description of the Bayer et al. device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

Upon applying the proper meaning of "self-clamping," discussed above relative to the Bejean et al. patent, it should now be clear that the Bayer et al. device is not self-clamping in the manner required by amended claim 52. Bayer et al. do not disclose any means that actively applies a force to the engagement member (e.g., 32, FIGS. 6A-6C) as a direct consequence of another force applied by the engagement member to the means. For example, upon insertion of engagement member 32 into binding elements 74, the engagement member applies downward forces to lower flanges 76 of the binding elements so as to rotate the binding elements into their closed, fully engaged or locked, positions. The binding elements do not apply any active clamping force to the engagement member as a direct result of the downward forces.

Once the engagement member is locked in place, if upward forces are applied by the engagement member to upper flanges 78, the binding elements simply passively resist these forces. There is no active clamping action present. Because Bayer et al. do not disclose the self-clamping limitation of amended claim 52, the Bayer et al. patent cannot anticipate independent claim 52, nor claim 53 that depends therefrom. It is noted that the Bayer et al. device may be appropriately called "self-closing" or "self-locking," but not "self-clamping" since no compressive forces due to a clamping action are present.

For at least the foregoing reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

***Morrow et al.***

The Examiner has rejected claims 52, 54 and 56-59 under 35 U.S.C. § 102(a) or (e) as being anticipated by U.S. Patent No. 6,189,913 to Morrow et al., stating Morrow et al. disclose all the elements of these claims. Applicant respectfully disagrees.

A detailed description of the Morrow et al. device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

Regarding independent claim 52, as discussed above in connection with each of the Bejean et al. and Bayer et al. patents, as amended this claim requires, among other things, a first means that is self-clamping into engagement, i.e., applies a force to, an engagement member with another force applied to the first means by the engagement member. The various Morrow et al. securing mechanisms work in a manner generally similar to the binding elements of the Bayer et al. binding elements discussed above. That is, a substantially downward force applied to a pivoting binding pin receiver (80, 80', 152) by a binding pin (24) when initially engaging the binding pin with the receiver merely pivots the receiver into a closed, or latched, position in which the binding pin is held in place until a user releases the receiver.

Like the Bayer et al. device, there is no self-clamping of the receiver against the binding pin as a direct result of the downward force applied by the binding pin to the receiver. Similarly, once the binding pin is engaged with the receiver and the receiver is in its latched position, an upward force applied to the receiver by the binding pin is merely passively resisted by the receiver. There is no self-clamping action in this scenario, either. Since Morrow et al. do not disclose or suggest the self-clamping limitation of amended independent claim 52, the Morrow et

al. patent cannot anticipate claim 52, nor claim 54 that depends therefrom. Like the Bayer et al. and Bejean et al. devices, the Morrow et al. mechanism may be properly referred to by a variety of terms, such as "self-closing" and "self-latching," among others, but not "self-clamping" because the Morrow et al. mechanism is devoid of any clamping action, as this term is properly construed.

Regarding claim 56, this claim requires, among other things, second and third means for, respectively, ejecting coherent material from a cavity of a receiver of an engagement member and for allowing the coherent material to move away from the receiver. The Morrow et al. void 26 corresponds to the cavity of claim 56. Again, Applicant asserts that the Morrow et al. binding does not include a second means for ejecting a coherent material from the cavity. Rather, as a boot is engaged with binding pin receiver 80, any coherent material present in void 26 of the boot would be compressed rather than ejected due to the configurations of the void and binding pin receiver.

In the Office Action, the Examiner directs Applicant to FIG. 10 and asserts that the third means for allowing the coherent material to move away from the receiver of claim 56 reads on the space between frame member 46 and snowboard 52. In reality, however, there is no unoccupied space between frame member 46 and snowboard 52. Rather, the space between these members is filled by the sole of the boot. Applicant refers the Examiner to FIGS. 3, 4, 7 and 8 and accompanying description that clearly indicates that frame member 46 is embedded within the sole (30) of the boot. When the boot is properly engaged within the Morrow et al. binding, sole 30 is in contact with the upper surface of snowboard 52 and, consequently, fills the space between frame member 46 and the snowboard. In this connection, FIG. 10 is deceptive on the point because it does not show sole 30 but only frame member 46, likely in order to provide clarity on the inter-engagement between binding pin 24 and binding pin receiver 80. In any event, Morrow et al. do not disclose or suggest at least the second and third means of independent claim 56 and, therefore, cannot anticipate this claim, nor claims 57-59 that depend therefrom.

For at least the foregoing reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

*Karol*

The Examiner has rejected claims 52, 54 and 56-58 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,690,351 to Karol, stating Karol discloses all the elements of these claims. Applicant respectfully disagrees.

A detailed description of the Karol device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

Regarding independent claim 52, as discussed above in connection with each of the Bejean et al., Bayer et al. and Morrow et al. patents, as amended this claim requires, among other things, a first means that is self-clamping into engagement, i.e., applies a force to, with an engagement member when another force applied to the first means by the engagement member. The Karol device works in a manner much different from Bejean et al., Bayer et al. and Morrow et al. devices, since each of those devices includes a pivoting latch but the Karol device has a linear sliding latch.

Despite the differences, however, it is clear that the Karol device does not include any first means that is self-clamping into engagement with an engagement member in direct response to a force applied to the first means by the engagement member. In contrast, whenever boot plate (56) applies a force to the engagement member (34), the response of the engagement member to that force is either: 1) to retract out of the way so as to allow the receptacle (60) of the boot plate to reach its engaging position during the initial engagement of the boot plate with the binding device or 2) to simply resist an upward force so as to prevent disengagement of the boot plate from the binding device, depending upon the circumstances. Never does engagement member 34 impart a clamping action on boot plate 56 that is caused by the force applied to the engagement member by the boot plate. Since Karol does not disclose or suggest the self-clamping limitation of amended independent claim 52, the Karol patent cannot anticipate claim 52, nor claim 54 that depends therefrom. Like the Bejean et al., Bayer et al. and Morrow et al. devices, the Karol device can be called many things, such as "self-latching," but not "self-clamping," since the Karol device does not exhibit any such self-clamping action.

Regarding claim 56, this claim requires, among other things, second and third means for, respectively, ejecting coherent material from a cavity of a receiver of an engagement member and for allowing the coherent material to move away from the receiver. In the Office Action, the Examiner correctly pointed out that Applicant's argument in the Preliminary Amendment

neglected to consider other embodiments of the receptacles disclosed by Karol. To the extent that Applicant's argument did not address all of the Karol receptacles, Applicant retracts that argument. That said, Applicant asserts that the receptacles 60 of FIGS. 5, 6 and 18 are not cavities, but rather are edge rabbets. In order to be a cavity, the receptacle needs to have concavity relative to a single reference surface. In contrast, an edge rabbet is open at two surfaces and, thus, is not a cavity.

However, others of Karol's receptacles are cavities, e.g., receptacle 60 of FIGS. 13-15 are cavities. Relative to these cavities, Applicant continues to assert that engaging members 34 would not act to eject coherent material therein, but rather compact the coherent material. This is so because the Karol cavities are largely right-rectangular parallelepiped-shaped and engaging members 34 are curved on their upper surfaces. Consequently, as one of these engaging members advances into one of the cavity-type receptacles 60 during engagement, the coherent material will tend to compact in the upper reentrant corner of the cavity against the curved upper surface (34a) of that engaging member. Therefore, the engaging member does not eject coherent material in accordance with claim 56, but rather simply compacts it. Since Karol does not disclose or suggest at least this limitation of independent claim 56, the Karol binding cannot anticipate claim 56, nor claims 57 and 58 that depend therefrom.

For at least the foregoing reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

**Warner**

The Examiner has rejected claim 32 under 35 U.S.C. § 102(a) or (e) as being anticipated by U.S. Patent No. 5,901,471 to Warner, stating Warner discloses all of the features of the binding of this claim. Applicant respectfully disagrees.

A detailed description of the Warner device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

In rejecting claim 32, the Examiner asserts that she does not consider any of the elements of the preamble to be limiting since they have been merely recited as part of an intended use recitation. The Examiner also asserts that the lateral and medial portion of the Warner bale 56 are clearly capable of being received into receivers located on the lateral and medial and lateral sides of an engagement member. Applicant respectfully disagrees with both of these assertions.

Regarding the discounting of the limitations of the preamble, statements of purpose or intended use in the preamble serve to limit a claim if such statements "result in a difference . . . between the claimed invention and the prior art." MPEP § 2111.02. Relative to claim 32, the preamble requires an engagement member having first and second receivers located on opposite lateral sides of the engagement member. Further, the body of claim 32 recites a first means for releasably engaging the first receiver and a second means releasably engaging the second receiver. Clearly, the statement in the preamble regarding the locations of the first and second receivers is necessary to provide a physical context to the locations of the first and second means. In other words, without the statement in the preamble, the first and second means generally have no limitation on where they may be located. This would be an absurd result. Rather, the preamble statement was made to place a limitation on the locations of the first and second means in order to define over the prior art. In particular, the first means must be configured to engage the first receiver on one lateral side of the engagement member and the second means must be configured to engage the second receiver on the opposite side of the engagement member.

Further, the locations of the first and second receivers indeed result in a difference between the claimed invention and the prior art, as required by the MPEP. Contrary to the Examiner's assertion, the Warner device simply does not have any structure corresponding to the first and second means that engage, respectively, the first and second receivers of the engagement member. This is so because the footwear for which the Warner binding was designed does not include any lateral side receivers. Therefore, it is manifestly proper to consider the preamble statement as limiting the claim.

The Examiner asserts in the Office Action that the medial and lateral portion of Warner's bale 56 are "clearly capable of being received into receivers located on the medial and lateral sides of an engagement member." First, the claim does not have any limitations directed to a medial receiver or a means for engaging a medial receiver. Second, the fact is that Warner does not disclose any lateral receiver. Consequently, the Examiner's assertion is based on hindsight of claim 32, hindsight which Applicant asserts is improper. It is clear from the Warner patent that the securing aspect of bale 56 is due to the engagement of the medial portion of the bale with the toe end of a piece of footwear in the recess formed between the outsole and the upper (see FIG. 1). Consequently, the lateral portions of bale 56 are designed to pass adjacent the outsole

so as to allow the medial portion to be located at the proper location to engage the toe end of footwear. Applicant asserts that someone having ordinary skill in the art would be hard-pressed to come up with receivers in an engagement member that the lateral portions of the bale could engage so as to secure the engagement member to binding, as required in claim 32 (see below). The fact is that the Warner binding works in a manner wholly different from the binding of claim 32. Consequently, someone skilled in the art would not be motivated to conjure such receivers that the Examiner proposes. They are simply at odds with the Warner design.

In addition to the foregoing, the fact remains that even if there were an engagement member with the Examiner's fictitious receivers for the lateral portions of bale 56, the Warner binding would not include all of the limitations of claim 32. Claim 32 requires that the first and second means (that engage corresponding receivers located on opposing lateral sides of and engagement member) secure the engagement member to the binding by their releasable engagement with the first and second receivers. That is, it is the first and second means that secure the engagement member to the binding. In order for the Warner binding to anticipate the claimed binding, the two lateral portions of bale 56 would have to secure the footwear to the binding. This is not reasonable, since in the Warner binding it takes three structures, i.e., toe bale 56, heel bale 58 and front harness 24, working together to secure the footwear to the binding. Consequently, the Warner device does not anticipate claim 32.

For at least these reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

#### **Rejections Under 35 U.S.C. § 103**

##### ***Warner/Polk, III et al.***

The Examiner has rejected claim 33 under 35 U.S.C. § 103 as being obvious in view of the Warner patent, discussed above, and U.S. Patent No. 5,794,362 to Polk, III et al., stating Warner discloses all of the elements of the binding of this claim except the use of a threaded rod in the length adjusting mechanism. The Examiner then states Polk, III et al. disclose a length adjusting mechanism that includes a threaded rod and asserts it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Warner binding with the threaded-rod length adjusting mechanism of Polk, III et al. Applicant respectfully disagrees.

A detailed description of the Polk, III et al. device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

The Warner/Polk, III et al. combination would lack at least the first and second means and the securing limitation of amended claim 33 discussed above in connection with the anticipation rejection of claim 32 in view of the Warner patent. Neither the Warner patent nor Polk, III et al. patent disclose this limitation. In addition, this feature would not have been obvious to a person having ordinary skill in the art at the time of the invention in view of design choice. Accordingly, amended claim 33 is not obvious in view of the present combination.

For at least the foregoing reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

**Watson/Bejean et al.**

The Examiner has rejected claims 48-50 under 35 U.S.C. § 103 as being obvious in view of the Watson and Bejean et al. patents, discussed above, stating Watson discloses all of the elements of the adjustable length binding of these claims except the use of a spring-type latch mechanism. The Examiner then states Bejean et al. disclose the spring-type latch mechanism of these claims and asserts it would have been obvious to a person having ordinary skill in the art at the time of the invention to provide the Watson binding with the spring-type latch mechanism of Bejean et al. Applicant respectfully disagrees.

A detailed description of the Watson device is presented in the Preliminary Amendment filed concurrently with the present application and is incorporated herein by reference.

Regarding independent claim 48, this claim as amended requires, among other things, a self-clamping latch that is self-clamping into engagement with a receiver with application of a force by an engagement member to the latch. Again, this self-clamping action is described above in detail relative to the anticipation rejection in view of the Bejean et al. patent. Neither Watson nor Bejean et al. disclose or suggest such a self-clamping latch. Nor would it have been obvious to a person having ordinary skill in the art at the time of the invention to provide either the Watson or Bejean et al. binding with a self-clamping latch. Therefore, the present combination does not render obvious amended independent claim 48, nor claims 49 and 50 that depend therefrom.

For at least the foregoing reasons, Applicant respectfully requests that the Examiner withdraw the present rejection.

#### **Patentability of New Claim 68**

New claim 68 depends from amended claim 52 that is directed to the self-clamping aspect of the present invention. Claim 68 requires that the base have an upper surface and that the first means be pivotably self-clamping into more forceful engagement with an engagement member with a force applied to the first means by the engagement member. None of the references of record disclose or suggest, alone or in combination with one another or ordinary skill in the art, such a first means. Any upward force applied to any of the binding devices of record is simply passively resisted by the binding devices. There is no active clamping taking place.

#### **CONCLUSION**

In view of the foregoing, Applicant submits that claims 32-35, 42-64 and 68 are in condition for allowance. Therefore, prompt issuance of a Notice of Allowance is respectfully solicited. If any issues remain, the Examiner is encouraged to call the undersigned attorney at the number listed below.

Respectfully submitted,

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Attachment

Terminal Disclaimer

Exhibit A

BTv.427567.1